

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of) MB Docket No. 14-82
)
PATRICK SULLIVAN) FRN 0003749041, 0006119796,
(Assignor)) 0006149843, 0017196064
)
and) Facility ID No. 146162
)
LAKE BROADCASTING, INC.) File No BALFT-20120523ABY
(Assignee))
)
Application for Consent to Assignment of)
License of FM Translator Station W238CE,)
Montgomery, Alabama)

To: Marlene H. Dortch, Secretary
Attention: Chief Administrative Law Judge Richard L. Sippel

**LAKE BROADCASTING, INC.'S MOTION FOR
LEAVE TO SUBMIT RESULTS OF POST
SEPTEMBER 15, 2016 TESTING OF MICHAEL RICE**

Lake Broadcasting, Inc. ("Lake"), by its attorney, pursuant to the Presiding Judge's *Order*, FCC 16M-27, released October 25, 2016, hereby submits a Motion for leave to submit the results of the post-September 15, 2016 testing of Mr. Michael Rice in this proceeding. In support whereof, the following is shown.

1. On September 26, 2016, Lake filed two new documents for the record that resulted from witness testimony by Dr. Kimberly Weitzl at her September 15, 2016 deposition in this proceeding. The two documents are an "Abel Assessment for Sexual Interest" and an up-to-date Static 2002-R assessment of Mr. Rice. Accompanying the two documents is a two-page Report by Drs. Ann Duncan-Hively

and Wells Hively concerning these tests. The Enforcement Bureau filed a late Motion to Strike the filing on October 7, Lake opposed the Motion on the same day, and the Presiding Judge ordered Lake to file the subject Motion in FCC 16M-27.

2. There has been no Order in this proceeding formally setting a closing date for discovery. The closest is an *Order*, FCC 16M-20, released June 21, 2016, which stated that “September 16, 2016 shall be the date on which all depositions shall be concluded, including deposing, transcriptions, and review for error”. However, in *Order*, FCC 16M-22, released July 20, 2016, the Presiding Judge changed the September 16 date to September 30, 2016. Therefore, Lake submits September 30 was the closing date for discovery in this proceeding. After the September 15 deposition session, Lake rushed to administer and submit the tests in question by September 26 in order to meet that deadline. The avowed basis for that submission – then and now – is to provide a full record in this proceeding as to Mr. Rice’s degree and extent of rehabilitation – not to rebut Dr. Weitzl’s deposition testimony. Lake did not submit the tests as rebuttal but rather to provide the tribunal with additional up-to-date evidence concerning which the Bureau’s witness, Dr. Kimberly Weitzl, had opened the door in her deposition testimony at TR 16-17 and 25.

3. In other words, Lake submitted the two test exhibits to enhance the record concerning Mr. Rice’s tests **and to fill a testimonial gap** – not to rebut anything that Dr. Weitzl stated. Since the discovery record was still open and about to close, Lake deemed it appropriate to administer and file the two tests without

requesting prior approval from the Presiding Judge. Counsel apologizes for not seeking the Presiding Judge's leave to file, but, under the circumstances as just explained, he did not believe that leave was necessary.

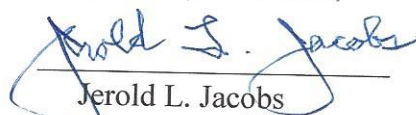
4. The two test exhibits speak for themselves and do not require any covering Report by Drs. Duncan-Hively and Hively. Thus, in the subject Motion, Lake has not included the two-page Report, which might be construed as rebuttal, rather than simply filling a testimonial gap. Standing alone, Lake urges that the two test exhibits are not rebuttal and should be accepted by the Presiding Judge in order to help create a full record of Mr. Rice's rehabilitation in this proceeding.

5. Why did Lake deem it necessary to augment the record in this manner? If one reads the four deposition transcripts in this proceeding, one will be shocked to see that almost all of the testimony concerns the ancient past – events that took place prior to Mr. Rice's arrest in 1990 or within three years after his release from prison on parole in December 1999. The Bureau maintains that this excessive and obsessive dwelling on the distant past is necessary to understand Mr. Rice's mental condition TODAY, but the Bureau does not "connect the dots" and link the past with the present. There is almost no testimony about Mr. Rice's current rehabilitation activities or mental condition. That fact became baldly evident during the deposition on September 15, 2016, and that is why Lake then hurried to carry out the two current tests on Mr. Rice that Dr. Weitzl mentioned but did not perform. Lake was not dilatory in not performing those tests sooner; it simply did not believe that the deposition record would be so bereft of up-to-date data or testimony from

the Bureau or its witnesses.

6. Lake strongly rejects the Bureau's view that acceptance of the two test exhibits would or should require any further deposition(s). The contents of the two exhibits are clear and speak for themselves. Any questions about them can be answered during cross-examination at hearing. Since the Bureau's own witness opened the door to these submissions by her own testimony, the Bureau should be estopped from objecting to their acceptance into the hearing record.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jerold L. Jacobs", is written over a horizontal line. The signature is stylized with a large, sweeping initial "J".

Jerold L. Jacobs
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Counsel for Lake Broadcasting, Inc.

Dated: October 28, 2016

Att: Exhibits 1 and 2

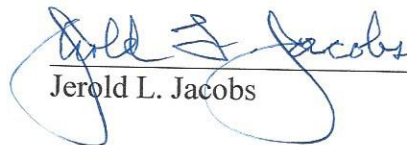
CERTIFICATE OF SERVICE

I, Jerold L. Jacobs, hereby certify that on this 28th day of October, 2016, I filed the foregoing "LAKE BROADCASTING, INC.'S MOTION FOR LEAVE TO SUBMIT RESULTS OF POST SEPTEMBER 15, 2016 TESTING OF MICHAEL RICE" in ECFS and caused a copy to be sent via First Class United States Mail and via e-mail to the following:

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Jerold L. Jacobs

Michael Rice

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Sexual Recidivism Risk for Males By VRT™ to Children

Client ID 21231

Age 75

Race White/Caucasian

Sex Male

Site ID 1070 Subsite: 0

Test Date 09/20/16 10:48:06 AM

VRT™ to children versus adults can help predict recidivism. Clients who have a higher VRT™ to children are more likely to sexually reoffend. Sexual reoffense includes many other sexual behaviors besides child sexual abuse, including voyeurism, public exposure, fetishism, bestiality, public masturbation, frottage, obscene phone calls/letters and rape.

The validity of the risk estimates depends on the similarity of your client to the participants in the study referenced below. Participants in the study had an AASI™ before receiving cognitive behavioral treatment. They were also monitored by probation officers.

Clients were divided into three risk groups: Higher (a VRT™ of over one standard deviation above the mean, or a ratio of .87), Medium (between one standard deviation above and one standard deviation below the mean) and Lower (below one standard deviation below the mean or a ratio of .47).

Your Client is in the Lower Risk Group

	1 Year	5 Years	10 Years	15 Years
Average Client Risk	1 %	4 %	7 %	9 %
Your Client	1 %	2 %	4 %	5 %

Average Risk: The average client's estimated risk to sexually reoffend at one, five, ten and 15 years.

Your Client's Risk: The estimated risk to sexually reoffend at one, five, ten and 15 years.

Your Client's Ratio is: 0.44 The ratio of VRT™ to children vs. VRT™ to adults + adolescents

Your Client's Percentile is: 13 %

The estimated ranking of this client. The higher the percentile, the more likely the client is to reoffend.

Steven R. Gray, Gene G. Abel, Alan Jordan, Tina Garby, Markus Wiegell, and Nora Harlow. Visual Reaction Time™ as a Predictor of Sexual Offense Recidivism: Sexual Abuse: A Journal of Research and Treatment 1079063213502680, first published on September 20, 2013 as doi: 1079063213502680

Michael Rice

Static-2002R Coding Form

STATIC-2002R CODING		
ITEMS	Raw Score	Subscore
AGE		
1. Age at Release 18 to 34.9 = 2 35 to 39.9 = 1 40 to 59.9 = 0 60 or older = -2 <div style="text-align: right; margin-right: 50px;">Age 58</div>		0
PERSISTENCE OF SEXUAL OFFENDING		
2. Prior Sentencing Occasions for Sexual Offences: No prior sentencing dates for sexual offences = 0 1 = 1 2, 3 = 2 4 or more = 3	0	
3. Any Juvenile Arrest for a Sexual Offence and Convicted as an Adult for a Separate Sexual Offence: No arrest for a sexual offence prior to age 18 = 0 Arrest prior to age 18 and conviction after age 18 = 1	0	
4. Rate of Sexual Offending: Less than one sentencing occasion every 15 years = 0 One or more sentencing occasions every 15 years = 1	0	
Persistence Raw Score (subtotal of Sexual Offending) 0 = 0 1 = 1 2, 3 = 2 4, 5 = 3	0	
Persistence of Sexual Offending SUBSCORE		0
DEVIANT SEXUAL INTERESTS		
5. Any Sentencing Occasion For Non-contact Sex Offences: No = 0 Yes = 1	0	
6. Any Male Victim: No = 0 Yes = 1	1	
7. Young, Unrelated Victims: Does not have two or more victims < 12, one of them unrelated = 0 Does have two or more victims < 12 years, one must be unrelated = 1	0	
Deviant Sexual Interest SUBSCORE		1
RELATIONSHIP TO VICTIMS		
8. Any Unrelated Victim: No = 0 Yes = 1	1	
9. Any Stranger Victim: No = 0 Yes = 1	0	
Relationship to Victims SUBSCORE		1

GENERAL CRIMINALITY		
10. Any Prior Involvement with the Criminal Justice System No = 0 Yes = 1	0	
11. Prior Sentencing Occasions For Anything: 0-2 prior sentencing occasions for anything = 0 3-13 prior sentencing occasions = 1 14 or more prior sentencing occasions = 2	0	
12. Any Community Supervision Violation: No = 0 Yes = 1	0	
13. Years Free Prior to Index Sex Offence: • More than 36 months free prior to committing the sexual offence that resulted in the index conviction AND more than 48 months free prior to index conviction = 0 • Less than 36 months free prior to committing the sexual offence that resulted in the index conviction OR less than 48 months free prior to conviction for index sex offence = 1	0	
14. Any Prior Non-sexual Violence Sentencing Occasion: No = 0 Yes = 1	0	
General Criminality raw score (subtotal General Criminality items) 0 = 0 1, 2 = 1 3, 4 = 2 5, 6 = 3	0	
General Criminality SUBSCORE		0
TOTAL -2 to 13		2

Score Label for Risk Category

-2 through 2 = Low
 3, 4 = Low-Moderate
 5, 6 = Moderate
 7, 8 = Moderate-High
 9 plus = High